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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/507,613	02/21/2000	James G. Whayne	15916-229x	1854

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EXAMINER

RODRIGUEZ, CRIS LOIREN

ART UNIT	PAPER NUMBER
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3763

DATE MAILED: 05/12/2003

25

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/507,613	WHAYNE ET AL.
	Examiner Cris L. Rodriguez	Art Unit 3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 20 February 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 10-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 10-13 and 15-37 is/are rejected.
- 7) Claim(s) 14 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152). |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>22</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. In view of the Appeal Brief filed on February 20, 2003, PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

- (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 10-12, 15-23, 27-37 are rejected under 35 U.S.C. 102(b) as being anticipated by Whayne et al (US 6,071,279).

Whayne discloses a catheter assembly (figs. 1 and 53) having a handle 18 with a strain relief element 68,336, an elongate catheter body 12,274, a control element 334 secured to the strain relief element 336, and an apparatus (36,26 or 304).

Claim Rejections - 35 USC § 103

4. Claims 13, and 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whayne et al in view of Brennen et al (US 5,439,006).

Whayne discloses the invention substantially as claimed. However, Whayne fails to disclose the control element being secured to the strain relief element by a substantially tubular member that surrounds respective portions of the strain relief element and the control element.

Brennen teaches a handle assembly (fig 3) where the control element 12 is secured to the strain relief element 34 by a substantially tubular member 42 that surrounds respective portions of the strain relief element and the control element 12. Given the teachings, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use Brennen's handle assembly with the Whayne's catheter assembly. Doing so would have manipulated the control element of the catheter assembly.

Allowable Subject Matter

5. Claim 14 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

6. Applicant's arguments filed February 20, 2003 have been fully considered but they are not fully persuasive.

7. In response to applicant's arguments that the interpretation of the phrase "strain relief element" is unreasonable because (1) it is inconsistent with the specification of the

present application and (2) it is inconsistent with the meaning given to the term “strain relief” on other catheter patents, the examiner disagrees. An operator using Whayne’s steering mechanism 68 (strain relief element) causes to strain and release the strain of the wire, by applying forces on the proximal end of the wire due the action of the steering mechanism 68. **The broadest reasonable interpretation has been given to the phrase “strain relief element” in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in applicant's specification. See *In re Morris*, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997).** Therefore, this definition is reasonable and within the scope of the specification.

8. There is one exception, and that is when an element is claimed using language falling under the scope of 35 U.S.C. 112, 6th paragraph (often broadly referred to as means or step plus function language). In that case, the specification must be consulted to determine the structure, material, or acts corresponding to the function recited in the claim. *In re Donaldson*, 16 F.3d 1189, 29 USPQ2d 1845 (Fed. Cir. 1994) (See MPEP § 2181- § 2186). The examiner suggests the use of means-plus-function language to give full weight to the specification meaning.

9. Moreover, since the **enlightenment** by way of definitions can be used for interpretation of the claim language, the examiner included with this office action **definitions** of the words “strain” and “relief” to support the examiner’s point of view.

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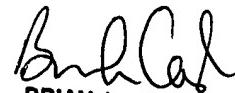
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cris L. Rodriguez whose telephone number is (703) 308-2194. The examiner can normally be reached on 7:30 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on (703) 308-3552. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3590 for regular communications and (703) 305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.



Cris L. Rodriguez
May 8, 2003



BRIAN L. CASLER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700

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re·lief

re·lief (rī-lēf') *noun*

1. The easing of a burden or distress, such as pain, anxiety, or oppression.
2. Something that alleviates pain or distress:
3. a. Public assistance. b. Aid in time of danger, especially rescue from siege.
4. a. Release from a post or duty, as that of sentinel. b. One who releases another by taking over a post or duty.
5. A pleasant or amusing change; a diversion.
6. a. The projection of figures or forms from a flat background, as in sculpture, or such a projection that is apparent only, as in painting. b. A work of art featuring such projection. Also called *relievo*.
7. *Geology*. The variations in elevation of an area of the earth's surface.
8. Distinction or prominence due to contrast: "*The light brought the white church . . . into relief from the flat ledges*" (Willa Cather).
9. *Law*. Redress awarded by a court.
10. A payment made by the heir of a deceased tenant to a feudal lord for the privilege of succeeding to the tenant's estate.

— *idiom.*

on relief

Receiving public assistance because of need or poverty.

[Middle English, from Old French, from *relever*, to relieve. See *relieve*. Senses 6, 7, and 8, French, from Italian *rilevo*. See *bas-relief*.]

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strain¹

strain (strān) *verb*

strained, strain·ing, strains *verb, transitive*

1. To pull, draw, or stretch tight: *strained the sheets over the bed.*
2. To exert or tax to the utmost: *straining our ears to hear.*
3. To injure or impair by overuse or overexertion; wrench: *strain a muscle.*
4. To stretch or force beyond the proper or legitimate limit: *strain a point.*
5. To alter (the relations between the parts of a structure or shape) by applying an external force; deform.
6. a. To pass (gravy, for example) through a filtering agent such as a strainer. b. To draw off or remove by filtration: *strained the pulp from the juice.*
7. To embrace or clasp tightly; hug.

verb, intransitive

1. To make violent or steady efforts; strive hard: *straining to reach the finish line.*
2. To be or become wrenched or twisted.
3. To be subjected to great stress.
4. To pull forcibly or violently: *The dog strained at its leash.*
5. To stretch or exert one's muscles or nerves to the utmost.
6. To filter, trickle, or ooze.
7. To be extremely hesitant; balk: *a mule that strained at the lead.*

noun

1. a. The act of straining. b. The state of being strained.
2. a. Extreme or laborious effort, exertion, or work. b. A great or excessive pressure, demand, or stress on one's body, mind, or resources: *the strain of managing both a family and a career.*
3. A wrench, twist, or other physical injury resulting from excessive tension, effort, or use.
4. *Physics.* A deformation produced by stress.
5. An exceptional degree or pitch: *a strain of zealous idealism.*

[Middle English *streinen*, from Old French *estreindre*, *estrein-*, to bind tightly, from Latin *stringere*.]

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